

Practice Directive #45

Permanent Partial Disability Benefits Section 23(1)

Date: July 16, 2002

BACKGROUND

Effective June 30, 2002, the *Workers Compensation Act* ("Act") was amended by Bill 49, the *Workers Compensation Amendment Act, 2002*. As a result, the Panel of Administrators approved amendments to the Board's policies concerning permanent partial disability awards.

EFFECTIVE DATE

Please see Practice Directive #38A, *Effective Dates & Transition Rules* and Practice Directive #38B, *Recurrences*.

LAW

Section 23(1) of the Act states:

Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board must

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and*
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.*

POLICY

Rehabilitation Services & Claims Manual ("RSCM") Policy item #39.00, Section 23(1) Assessment states, in part:

...In all cases where a permanent partial disability results from a worker's injury, the Board must assess the worker's entitlement to a permanent partial disability award under section 23(1) of the Act. Section 23(1) sets out the rule the Board follows in determining a worker's impairment of earnings capacity resulting from a work injury.

The percentage of disability determined for the worker's condition under section 23(1)(a), reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.

A permanent partial disability award calculated under section 23(1) also reflects such factors as:

- *short term fluctuations in the compensable condition*
- *reduced prospects of promotion*
- *restrictions in future employment*
- *reduced capacity to compete in the labour market;*
- *variations in the labour market...*

Adjudicative Guidelines

- Once a worker's temporary disability ceases and the compensable impairment is considered to have stabilized (reached medical plateau), the Board officer determines whether the impairment is considered to be permanent.
- In all cases where a permanent partial disability results from a work injury, a worker's entitlement to a permanent partial disability award must be calculated using the method set out in section 23(1) of the *Act*.
- If there is sufficient medical evidence on file to make a reasoned decision regarding the worker's permanent impairment, a referral for medical assessment may not be required.
- A permanent partial disability award is granted following the determination of a worker's entitlement under section 23(1).
- It is only under exceptional circumstances that a worker will additionally be assessed for entitlement under section 23(3). See Practice Directive #46 for further explanation of section 23(3) entitlement. If, in those exceptional cases, a worker has entitlement under section 23(3), payment of the disability benefit will not be delayed while the officer determines the section 23(3) entitlement. If there is likely to be a delay in this determination, the officer will pay the section 23(1) award, and the section 23(3) award will be determined subsequently.
- The worker's entitlement under section 23(1) will be subject to adjustment if the worker is in receipt of CPP disability benefits for the same injury, subject to the statutory minimum. (See Practice Directive #47, *Integration of Canada Pension Plan Disability Benefits*.)

- Benefits paid under section 23(1) will continue to the date the worker reaches age 65, which is recognized as the standard age of retirement, or a later date, if the Board is satisfied that the worker would have worked beyond the age of 65 years. Where the worker is 63 or older at the time of injury, benefits will be paid for a maximum of 2 years from the date of injury, unless the Board is satisfied that the worker would have worked beyond the age of 65. When the worker reaches age 65, or on the date of his or her last monthly periodic payment, if after age 65, the section 23(1) periodic payments will conclude and a lump-sum retirement benefit is provided. (See Practice Directive 41, *Duration of Benefits – Age 65.*)
- Section 23(1) reviews will be undertaken in accordance with RSCM Policy item #40.32, *Worsening or Improvement of Disability.*